

DOCUMENT NO. 5136
ADOPTED
2/16/89

AFFORDABLE HOUSING AGREEMENT
BETWEEN
THE BOSTON REDEVELOPMENT AUTHORITY
AND
COURT HOUSE REALTY TRUST
AND
WILLIAM KILEY, TRUSTEE
JOINTLY AND SEVERALLY, AS DEVELOPER

This agreement is entered into this _____ day of _____, 1988, by and between the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under Chapter 121B of the Massachusetts General Laws, as amended (hereinafter referred to as the "Authority") and, jointly and severally as Developer, William Kiley, Trustee, and Courthouse Realty Trust, a Massachusetts real estate trust (hereinafter referred to as "Developer").

WITNESSETH THAT:

WHEREAS, approximately fifty percent of all households within the City of Boston fall below the low income guidelines of the federal and state governments; and

WHEREAS, affordable housing opportunities for low and moderate income families in the City of Boston are limited; and

WHEREAS, the City of Boston desires to increase housing opportunities for low and moderate income families in mixed income residential developments;

WHEREAS, Developer proposes to construct 24 residential units and approximately 11 on-grade parking spaces and 13 below-grade parking spaces (hereinafter referred to as the "540 East Broadway Project" on a site consisting of 12,000 square feet in South Boston, Massachusetts and is bounded by residential uses to the east, residential uses to the west, East Broadway Street to the south and by East Third Street to the north (hereinafter referred to as the "540 East Broadway Site"); and

WHEREAS, Developer recognizes the need for low and moderate income housing and of the desirability of providing low and moderately priced units in the 540 East Broadway Project;

NOW, THEREFORE, in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged, parties do hereto mutually agree as follows:

Section 1. Definitions

The terms defined in this Section shall for all purposes of this Agreement have the following respective meanings:

- (a) "Agreement" shall mean this Affordable Housing Agreement.

- (b) "Authority" shall mean the Boston Redevelopment Authority, a body politic and corporate, organized under Massachusetts General Laws, Chapter 121B, with offices at One City Hall Square, Boston, Massachusetts 02201, and its successors and assigns.
- (c) "540 East Broadway Project" shall mean the development of 24 residential units, and approximately 11 on-grade parking spaces and 13 basement parking spaces on the 540 East Broadway Site.
- (d) "540 East Broadway Site" shall mean the site known as 540 East Broadway Street, South Boston, Massachusetts and bounded by residential uses to the east, residential uses to the west, East Broadway Street to the south and by East Third Street to the north, as more fully set forth in Exhibit A to this Agreement.
- (e) "Developer" shall mean William Kiley, Trustee, and Court House Realty Trust, a Massachusetts real estate trust with its principal place of business at 711 East Broadway Street, South Boston, Massachusetts 02127.
- (f) "Effective Date" shall mean the date as defined in Section 15 of this Agreement.
- (g) "Low-Income Household" shall mean a household that is equal to or less than fifty percent (50%) of the median income for the Boston Primary Metropolitan Statistical Area (PMSA).

- (h) "Moderate-Income Household" shall mean a household that has an income that is greater than fifty percent (50%) of the median income for the Boston Primary Metropolitan Statistical Area (PMSA) and less than eighty percent (80%) of the median income for the Boston Primary Metropolitan Statistical Area (PMSA).
- (i) "Upper Moderate-Income Household" shall mean a household that has an income that is greater than eighty percent (80%) of the median income for the Boston Primary Metropolitan Statistical Area (PMSA) and is equal to or less than one hundred and ten percent (110%) of the median income for the Boston Primary Metropolitan Statistical Area (PMSA).
- (j) "Term of Agreement" shall mean the period of time from the date hereof to thirty (30) years from the Certificate of Occupancy is issued.

Section 2. Developer's Obligations

- (a) Developer shall construct 24 two bedroom units, and approximately 11 on-grade parking spaces and 13 basement parking spaces.
- (b) Of these 24 housing units, Developer shall provide 2 units for homeownership opportunities to moderate and upper moderate income families. The income mix for the affordable units shall be as follows:

Two two-bedroom units shall be occupied by moderate and/or upper moderate Income Households.

Developer's Affordable Housing proposal which identifies maximum yearly income, monthly payments, sales prices, closing costs and mortgage amount is attached hereto as Exhibit B.

- (c) Developer shall sell the units for moderate and upper moderate income households based on the following maximum sales price schedule:

\$85,000 - 2 bedroom unit

Developer shall include in the deed transferring title to the moderate and upper moderate income households a deed restriction approved by the Authority limiting the sale of the condominium units to moderate and/or upper moderate income households according to the income mix set forth in subsection (b) above for a period of thirty (30) years from the date the Certificate of Occupancy is issued. This deed restriction shall be in substantially the form attached hereto as Exhibit C.

- (d) Developer shall obtain a set aside from the Massachusetts Housing Finance Agency (MHFA) for a below-market interest rate assisted mortgages to enable moderate and/or upper moderate income families to purchase their condominiums.
- (e) Developer will offer the affordable units to moderate and upper moderate income families according to the guidelines, rules and regulations set forth by the Massachusetts Housing Finance Agency (MHFA).

- (f) In the event the developer decides to do a rental development instead of a homeownership condominium development,
- (1) Developer shall rent the two (2) affordable units (for a period of fifteen years from the date of initial occupancy). To low and/or moderate income households who meet the rules and regulations of the State's Chapter 707 Program and/or the U.S. Department of Housing and Urban Development's Section 8 Program, or its successor thereof.
- (2) Developer shall rent the affordable units in accordance with rules and regulations of the State's Chapter 707 Program and/or the U.S. Department of Housing and Urban Development's Section 8 Program, or its successor thereof, whichever is used to rent the affordable units.
- (g) Developer shall not apply for any building permit for the 540 East Broadway Project prior to the execution of the Affordable Housing Agreement for the 540 East Broadway Project.

Section 3. Authority's Obligations

- (a) Authority shall provide such information as may assist the developer in obtaining below market mortgage interest rates for the two units to be sold to moderate and upper moderate income households under MHFA's assisted mortgage program.

- (b) Authority shall maintain an affordable housing sales price index based on the Boston PMSA median family income for all households. The index shall be used to evaluate proposed sales prices for the affordable units offered to moderate- and upper moderate-income families.

Section 4. Timetable

The Developer shall use best efforts to perform its construction and other activities in accordance with the following schedule:

<u>Activity</u>	<u>Commencement Date</u>	<u>Completion Date</u>
Construction	_____	_____
Sale of Affordable Units	_____	_____

Section 5. Defaults and Remedies

In the event of a default for Developer's failure to comply with the provisions of this Agreement, the BRA, in addition to reasonable and customary remedies for default, shall have the right to petition any court of competent jurisdiction for specific performance and any other appropriate relief. In addition, in the event of such a default, Developer shall be liable for the reasonable costs of enforcement to the BRA, including legal expenses.

Section 6. Records and Reports

Project Records. Developer shall keep and maintain books, records, and other documents regarding compliance with the terms and provisions of this Agreement,

and shall make the same available at all reasonable times for inspection, copying, audit and examination by the Authority.

Section 7. Access to 540 East Broadway Project

Developer agrees that any duly authorized representative of the Authority shall, at all reasonable times, have access to any portion of the 540 East Broadway Project until the completion of the construction of the 540 East Broadway Project.

Section 8. Assumption of Liability.

- (a) Developer shall assume the defense of and hold the City, its officers, agents or employees, harmless from all suits and claims against them or any of them arising from any act or omission of the Developer, its agents or employees in any way connected with performance under this Agreement.
- (b) Developer shall assume the defense of and hold the BRA, its officers, agents or employees, harmless from all suits and claims against them or any of them arising from any act or omission of the Developer, its agents or employees in any way connected with performance under this Agreement.

Section 9. Waiver

No act by or on behalf of the City and the BRA shall be, or be deemed or construed to be, any waiver of any requirement or provision of this Agreement, unless such alleged waiver be in writing, signed by the City and the BRA, and is expressly stated to constitute such waiver. Any express, written waiver by the City and the BRA of any rights, terms or conditions of this Agreement shall not operate to waive any rights, terms or conditions of this Agreement or any other rights, terms, conditions the City and the BRA may have as against the Developer other than such rights, terms and conditions as are explicitly set forth in the express, written waiver.

Section 10. Conflict of Interest

Developer covenants and agrees that it shall, in carrying out its responsibilities under this Agreement, comply strictly with each and every provision of c. 268A of the Massachusetts General Laws (the Conflict of Interest Law) to the full extent of the applicability of said provisions to the Developer.

Section 11. Assignment

Developer shall not assign or in any way transfer its interest or rights in this Agreement without the prior written consent of the Authority, which consent shall not be unreasonably withheld.

Section 12. Successors and Assigns

The provisions of this Agreement shall be binding upon, and shall inure to the benefit of, the successors and assigns of the Developer and the public body or bodies succeeding to the interest of the Authority.

Section 13. Notices

All notices or other communication required or permitted to be given under this Agreement shall be in writing, signed by a duly authorized officer of the Developer, or of the Authority, and shall be deemed delivered if mailed, postage prepaid, by registered or certified mail, return receipt requested, to the principal office of the party to which it is directed, which is as follows unless otherwise designated by written notice to the other party:

Developer:

William Kiley, Trustee
Court House Realty Trust
711 East Broadway
South Boston, MA 02127

with a copy to:

Daniel Rull, Esquire
Rull & McKenney
583 East Broadway
South Boston, MA 02127

Authority:

Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201
Attention: Director

with a copy to:

Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201
Attention: Chief General Counsel

Section 14. Amendment and Approvals

This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the City, the Authority, and the developer, his successors and assigns. Approvals provided by the Authority pursuant hereto shall be in writing.

Section 15. Severability

Each and every covenant and agreement contained in this Agreement is and shall be construed to be a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 16. Execution in Counterparts

This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 17. Table of Contents, Titles and Headings

The headings of the sections, subsections and paragraphs set forth herein are for convenience of reference only and are not a part of this Agreement and shall be disregarded in construing or interpreting any of the provisions of this Agreement.

Section 18. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

Section 19. Effective Date

This Agreement shall be deemed to become effective as of the date it shall be executed and dated by all parties.

Section 20. Expiration

This Agreement shall terminate thirty (30) years from the date the Certificate of Occupancy is issued hereof and the provisions contained herein shall be null and void as of the date of termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement in three (3) counterparts to be signed, sealed and delivered by their respective duly authorized representatives, as of the date first written above.

WITNESS:

BOSTON REDEVELOPMENT AUTHORITY

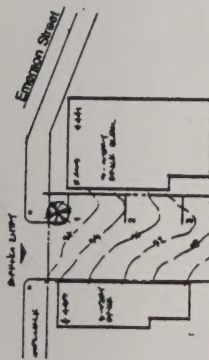
By: _____
Stephen Coyle, Director

WITNESS:

COURT HOUSE REALTY TRUST

By: _____
William Kiley, Trustee

East Third Street



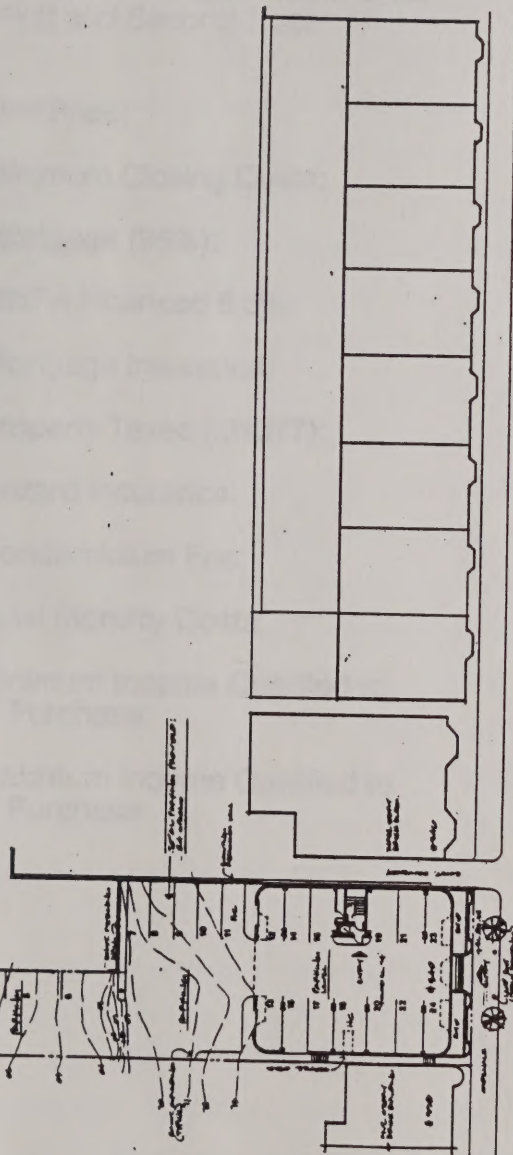
Architect



pde associates inc.
16 Canal Street, Boston, MA 02114 (617) 387-4777

Proposed Apartments 540 East Broadway South Boston, MA

7 November 1986



East Broadway

Site Plan

1"=20'
North arrow - 0° 00' 00" (true) and
magnetic declination 11° 15' E



Contextual Elevation
East Broadway - Looking North

N.E.A.

Exhibit B

540 East Broadway Project
South Boston, MA

Proposed Affordable Housing Program
and Estimated Costs

Number of Units: Two - 2 Bedroom Units
Location: First and Second Floor

Unit Price:	\$85,000
Minimum Closing Costs:	\$ 8,500
Mortgage (95%):	\$80,750
MHFA Financed 8.5%:	\$ 621/month
Mortgage Insurance:	\$ 34
Property Taxes (.01077):	\$ 76
Hazard Insurance:	\$ 34
Condominium Fee:	\$ 100
Total Monthly Costs	\$ 865
Minimum Income Qualified to Purchase:	\$37,000
Maximum Income Qualified to Purchase:	\$43,000

DEED RIDER
COVENANT FOR AFFORDABLE HOUSING

Non-HOP Condo - B
BRA did not own
Project Site

PRELIMINARY STATEMENT

The purpose of this covenant is to provide a uniform plan for administration and enforcement of covenants and restrictions imposed upon real property by the City of Boston and the Boston Redevelopment Authority for the purpose of regulating the development of real property for housing for persons of low and moderate income. Such covenants and restrictions arise as a result of urban renewal, disposition of land, and the granting of public benefits or relief from regulation. Such covenants and restrictions constitute a portion of the consideration to be paid for such real property or public benefit or relief from regulation. This covenant is imposed to promote the public health, safety, convenience and welfare by preventing overcrowding and deterioration of existing housing and by encouraging expansion of the City of Boston's housing stock; to provide for a full range of housing choices for all incomes, ages, and family sizes; to mitigate the impacts of market rate housing on the supply and costs of housing for low and moderate income households; to relieve the burden on City of Boston and the Boston Redevelopment Authority to use other land for housing low and moderate income persons; to fulfill obligations under statutes and regulations for urban redevelopment and other public purposes; to increase the production of housing units affordable to low and moderate income households and to expand the supply of housing to meet existing and anticipated employment needs within the City of Boston.

NOW, THEREFORE, as consideration from the Owner to the Authority for the conveyance of the Premises, the Owner, for itself, its heirs, successors and assigns, hereby covenants and agrees that the Premises shall be subject to the following agreements, covenants and restrictions which are hereby imposed for the benefit of, and shall be enforceable by, the Developer's agent and designee, the Authority, or its successors, assigns, agents and designees.

1. Definitions. In this Covenant, the following words and phrases shall have the meanings indicated:

"Authority" means the Boston Redevelopment Authority, a public body politic and corporate organized and existing under Chapter 121B of the Massachusetts General Laws, as amended, its successors, assigns, agents and designees;

"Covenant" means this document and all of its provisions including, without limitation, all affirmative covenants, restrictive covenants and options contained herein;

"Deed" means the deed or other instrument between the Developer and the Owner recorded with Suffolk Registry of Deeds and which subjects the Premises to this Covenant;

"Developer" means

"Household" means all persons who reside or intend to reside together at the Premises;

"Maximum Resale Price" means the maximum price permitted for the sale of the Premises, as set forth in Section 2;

"Option" means the option to purchase set forth in Section 9 of this Covenant;

"Owner" means the person(s) or entity identified in the Deed and any heir, successor or assign holding an interest in the Premises;

"Premises" means the land conveyed by or described in the Deed recorded herewith together with any improvements now or hereafter erected thereon.

2. Covenant; Maximum Resale Price. The Premises, or any interest therein, shall not be sold, conveyed, assigned or otherwise disposed of, for consideration in excess of the Maximum Resale Price as defined below. Consideration shall include the aggregate value of all money, property and services of every kind given or paid by the purchaser to or for the benefit of the Owner in connection with the transfer of the Premises, including any consideration paid

for any other real property or personal property conveyed by the Owner to the purchaser.

The "Maximum Resale Price" for the Premises as of a given date shall be the sum of:

- a) the maximum price for the Premises specified in the Deed, increased five percent (5%) per annum, compounded annually;
- b) plus the actual cost of bedrooms added to the Premises;
- c) plus the actual cost of bathrooms added to a Premises containing three or more bedrooms;
- d) plus the actual cost of other capital improvements made to the Premises, provided that, such amount shall not exceed one percent, per year, of the price paid for the Premises, by Owner from time to time;
- e) plus the amount incurred by the Owner for the services of a real estate agent, up to an amount not greater than six percent (6%) of the sum of (a) through (d) above, and provided that such expense is documented.

The cost of capital improvements shall be included in the Maximum Resale Price only if, (i) the improvement is considered to be a "capital" improvement within the definition of the Internal Revenue Code; (ii) the improvements complied with all pertinent statutes, ordinances and regulations at the time such improvements were made, and (iii) the cost of such improvement has been documented at the time of resale.

3. Covenant; Owner-Occupancy. Owner shall occupy the Premises as his or her or their principal residence. Notwithstanding the foregoing, Owner may lease the Premises for a single period, not to exceed six months, provided that the rent paid by the lessee is not greater than one hundred fifteen percent (115%) of the Owner's then current monthly housing costs. Housing costs shall be defined as mortgage principal and interest payments, mortgage insurance and

property insurance premiums, real estate taxes, water and sewer charges, condominium fees, and utilities if included in the rent. In no other circumstance shall the Owner lease the Premises without cause and the prior written consent of the Authority.

4. Certificate of Authority as to Maximum Resale Price. Upon written application and upon submission of such evidence as the Authority may require, the Authority shall furnish to any Owner, mortgagee or person having a security interest in the Premises, a certificate in recordable form stating the Maximum Resale Price for the Premises and itemizing the amount calculated in accordance with Section 2 to be the value of capital improvements made to the Premises. Such certificate shall be valid for the period stated in the certificate.

5. Certificate of Compliance. No conveyance, sale or transfer shall be valid and be deemed in accordance with the terms of this Covenant unless a certificate, or certificates, is obtained and recorded, signed and acknowledged by the Authority which refers to the Premises, the Owner thereof, and the Maximum Resale Price therefor, and stating that the proposed conveyance, sale or transfer is in compliance with this Covenant.

6. Conclusive Evidence of Compliance with this Covenant. Certificates of the Authority may be relied upon as follows:

a) A mortgagee of the Premises may conclusively rely upon:

i) a certificate issued by the Authority pursuant to Section 4 as to the Maximum Resale Price of the Premises, provided that such Maximum Resale Price is not exceeded by the consideration for the Premises stated in the recorded deed to the mortgagor and further provided that such certificate of Maximum Resale Price is recorded in the Suffolk Registry of Deeds; and

ii) an affidavit of the mortgagor of the Premises that the mortgagor's Household occupies the Premises as his or her or their principal residence (or intend to so occupy in the case of a purchase money mortgage).

b) An Owner of the Premises shall not be subject to any remedy of specific performance or other penalty arising out of events prior to his or her purchase of the Premises, provided that such purchaser has complied with the Maximum Resale Price and actual occupancy requirements of this Covenant.

c) This Section shall not limit the right of persons to rely upon other certificates of the Authority.

d) All references to a person shall include all other persons claiming an interest in the Premises by, through or under such person.

7. Covenant; Compliance. The Owner shall furnish such information about the Premises as the Authority may request from time to time on the identity of the Owner, the identity of any mortgagee or other person having an interest in the Premises, the consideration paid for the Premises, the condition of the Premises, the identity of the occupants, and any other information which the Authority deems relevant, all for the purpose of assuring compliance with this Covenant. The Authority shall have access to inspect the Premises at reasonable times and on reasonable notice.

8. Rights of Mortgagees. Other provisions of this Covenant notwithstanding, a financial institution may hold a mortgage or security interest in the Premises and may acquire title to the Premises by foreclosure or instrument in lieu of foreclosure; upon either such acquisition, the covenants, restrictions and options contained in this Covenant shall terminate and have no further effect provided that (a) upon receipt by the Authority of notice in any form, including notice by newspaper publication, of an impending foreclosure against the Premises, the mortgagee shall allow the Authority the opportunity to cure such default within thirty (30) days of receipt of such notice or to exercise its option in accordance with the terms and conditions set forth herein and (b) that the principal amount secured by such mortgage or security interest did not exceed ninety-five percent (95%) of the Maximum Resale Price calculated according to Section 2 at the time of the granting of the mortgage or security interest.

Further, the lender shall notify the Authority in the event of any default for which the lender intends to commence foreclosure proceedings but no deficit failure to notify the Authority shall impair the validity of foreclosure. Said notice shall be sent to the Authority as set forth in Section 15 of this Agreement.

Further, provided that if any person who was an owner of the Premises prior to foreclosure acquires an interest in such Premises after foreclosure, then all covenants and options contained herein shall apply to all subsequent occupancy, rental and sale of the Premises.

Further provided, that in consideration of the release of this Covenant, in the event of such foreclosure or transfer in lieu of foreclosure and if the Premises are sold to a third party, all proceeds of the sale shall be applied as follows: first, to the lender to pay all sums owing to lender; second, to any public or institutional lender, in the order of their respective priority, to pay all sums owing to said lenders, including the Authority; and the balance, if any, to the Owner.

9. Option. The Authority reserves or the Owner grants to the Authority, as the case may be, the right and option to purchase the Premises upon one or more of the following events:

- a) The Owner has delivered a written notice of intent to sell to the Authority, which notice is a requirement of this Covenant and shall be a condition precedent to any conveyance of the Premises or any interest therein;
- b) Any legal or beneficial interest in the Premises is conveyed without notice to the Authority as provided above, unless the Authority shall have waived its Option with respect to a particular sale; or
- c) Any legal or beneficial interest in the Premises is conveyed for consideration in excess of the Maximum Resale Price; or
- d) The Premises are leased upon terms not complying with Section 3 of this Covenant; or

e) Receipt by the Authority of notice in any form (including notice by newspaper publication) of an impending foreclosure against the Premises; or

f) Receipt by the Authority of notice in any form (including notice by newspaper publication) of the taking of the Premises for unpaid taxes.

10. Term of the Option. The right of the Authority to exercise its Option pursuant to the preceding section shall terminate on the earlier of the following: (a) fifty (50) years from the date of the Deed; or (b) twenty-one (21) years following the death of the last survivor among the following named persons: (i) Harry, Prince of Wales, (ii) Rose Kennedy Schlossberg; and (iii) John F. Kennedy, Jr.

11. Option Price. The agreed purchase price of the Premises upon the exercise by the Authority of the Option is the lesser of the Maximum Resale Price or the fair market value. Fair market value may be determined at the Authority's discretion and shall be established according to an independent appraisal. In the event that an Owner has sent notice pursuant to Section 9(a), the price shall be set forth in a Certificate of Agreement executed in a timely manner by both the Authority and the Owner. If such Owner disputes the validity of the price then the Owner and the Authority shall select a third party arbitrator to determine such value and each shall pay one-half of the costs of the arbitration. The decision of the arbitrator shall be binding upon both parties and the Owner and the Authority shall execute a Certificate of Agreement consistent with such decision.

12. Exercise of Option. If the Authority wishes to exercise the Option, the Authority shall do so by giving written notice to the Owner.

In the event that the Authority is exercising its Option pursuant to the Owner's notice of intent to sell, as set forth in Section 9(a) of this Covenant, then the Authority's notice of its intent to exercise the Option shall be given within ten (10) business days of executing the Certificate of Agreement. Further, within sixty (60) days of such notice by the Authority, the Authority and Owner shall execute a Purchase and Sale Agreement consistent with the terms of this Covenant and providing for a deposit.

The Premises are to be conveyed by a good and sufficient quitclaim deed running to the Authority or its designee, conveying a good and clear record and marketable title thereto, free from encumbrances, except such taxes for the then current year as are not due and payable on the date for the delivery of such deed; such matters of record as were of record immediately prior to the recording of the Deed; and such encumbrances as to which the Authority may have given its express written consent. The Premises shall be delivered in the same condition as at the time the Authority exercises the Option, free of all tenants and occupants. The Authority shall be entitled to an inspection of the Premises prior to delivery of the deed in order to determine whether the condition thereof complies with the terms of this paragraph. Rents, fuel, common condominium charges, and water and sewer use charges, if applicable, and current real estate taxes shall be adjusted as of the date of delivery of the Deed. If the amount of such real estate taxes is not known at the time of delivery of the Deed, they shall be apportioned on the basis of the taxes assessed for the preceding year, with a reapportionment as soon as the new tax rate and valuation can be ascertained.

If Owner shall be unable on the closing date to give title or to make conveyance or to deliver possession of the Premises, all in accordance with the terms hereof, or if on the closing date the Premises do not conform with the requirements hereof, then the date of the closing hereunder shall be postponed for a period of thirty (30) days during which period the Owner shall use reasonable good faith efforts to remove any defects in title or to make conveyance or deliver possession of the Premises, all in accordance with the terms hereof or to make the Premises conform with the requirements hereof, as the case may be. The purchase price to be paid by the Authority to the Owner shall be reduced by any amount paid by the Authority to persons holding mortgages or other liens against the Premises.

If after the expiration of the aforesaid time for the closing, any title defects shall not have been removed and conveyance not made and possession delivered, or the Premises do not conform, all is required hereunder, then the Authority may without waiving any claims against the Owner, either (a) terminate the Authority's obligation to purchase the Premises pursuant to its exercise of the Option, or (b) accept such title as Owner can deliver to the Premises in their then condition and to pay therefor the purchase price; pro-

vided that in the event of such conveyance in accordance with this paragraph, if the Premises shall have been damaged by fire or casualty insured against, or taken in whole or in part by eminent domain, then Owner shall, unless Owner has previously restored the Premises to their former condition either: (a) pay over or assign to Authority, on delivery of the deed, all amounts recovered or recoverable on account of such insurance or award for taking, less any amounts reasonably expended by Owner for any partial restoration; or (b) if a holder of a mortgage on the Premises (to the extent such holder has an interest in the proceeds or award) shall not permit the insurance proceeds or award or any part thereof to be used to restore the Premises to their former condition or to be so paid over or assigned, give Authority a credit against the purchase price, on delivery of the deed, equal to said amounts so recovered or recoverable and retained by the holder of the said mortgage less any amounts reasonably expended by Owner for any partial restoration.

Nothing contained herein as to Owner's obligation to remove defects in title or to make conveyance or to deliver possession of the Premises in accordance with the terms hereof, as to use of proceeds to clear title or as to the Authority's election to take title, nor anything else in this Covenant shall be deemed to waive, impair or otherwise affect the priority of the Option over matters appearing of record, or occurring, at any time after the recording of this Covenant, all such matters so appearing or occurring being subject and subordinate in all events to the Option.

13. Failure to Exercise Option. In the event that the Authority shall fail to give such notice of election to exercise the Option within the time above specified or in the event that the Authority shall, after giving such notice, fail to complete such purchase as hereinabove provided, then the Owner shall be free thereafter to sell and convey the Premises subject to the restrictions set forth in this Covenant.

Furthermore, Owner shall be entitled to a certificate, in recordable form and on demand, executed by the Authority, that it elects not to exercise the Option. If the Authority provides such a certificate, it shall be recorded with the deed from the Owner and then such certificate shall be conclusive evidence of compliance with the requirements of this instrument with respect to Section 11.

14. Proceeds from Casualty or Taking or Abandonment of Condominium Regime. If the Premises are destroyed by fire or other casualty and not rebuilt, or if it is taken by eminent domain, or if the Premises cease to be a separate ownership unit by reason of abandonment of a condominium regime followed by a sale of the entire building with the proceeds of sale being distributed to the former unit owners, then all proceeds of insurance or condemnation award or sale in excess of the Maximum Resale Price shall be the property of the Authority as compensation for the loss of the benefit of this Covenant.

15. Notice. Any notice or other communication required or permitted to be given under this Covenant must be in writing and shall be effective when received by the party to whom it is addressed or four (4) business days after mailing by registered or certified mail, return receipt requested, whichever first occurs. Notices and communications to the Authority shall be sent to: Boston Redevelopment Authority, One City Hall Square, Boston, MA 02201, Attention: Director, or the Agent. Notices and other communications to the Owner shall be sent to the address stated in the Deed as the Owner's address or to the address of the Owner of the Premises as shown on the tax assessment roll of the City of Boston. Either party by written notice to the other may designate a different address to which notices shall thereafter be sent.

16. Covenants to Run with the Land. It is intended and agreed that the agreements, covenants and restrictions set forth in this Covenant shall run with the land constituting the Premises and shall be binding upon the Owner, its successors and assigns, for the benefit of and shall be enforceable by the Authority and its successors and assigns, for a period of thirty (30) years from the date of the Deed, unless a notice of restriction is recorded by the Authority or its successors and assigns before the expiration of thirty (30) years from the date of the Deed in which case such agreements, covenants and restrictions shall continue for twenty (20) years from the date of recording such notice of restriction. It is further agreed that the reservation or grant of the agreements, covenants and restrictions contained herein are for public and charitable purposes.

Owner shall include a reference to this Covenant in any and all deeds or other instruments conveying an interest in the Premises or any part thereof.

17. Appointment of Agent. The Authority may from time to time appoint and revoke the appointment of one or more agents who shall have the power to issue certificates as provided herein and to exercise and enforce the rights of the Authority as provided herein. Such appointments shall be made and revoked only by instrument in writing recorded in the Suffolk Registry of Deeds and each such action shall be effective only upon recording. No such instrument of appointment or revocation of appointment shall be effective unless it expressly refers to this Covenant.

18. Enforcement. Without limitation on any other rights or remedies of the Authority, its successors and assigns, in the event of any rental or occupancy or sale or other transfer or conveyance of the Premises in violation of the provisions of this Covenant, the Authority shall be entitled to the following remedies, which shall be cumulative and not mutually exclusive:

- a) specific performance of the provisions of this Covenant;
- b) voiding of the rental arrangement that violates this Covenant;
- c) money damages for charges in excess of maximum rents or maximum resale prices;
- d) money damages for the cost of creating or obtaining other comparable dwelling units to fulfill the need for affordable housing by low income and moderate income households;
- e) if the violation is a sale of the Premises at a price greater than the Maximum Resale Price as provided herein, the Authority shall have the option to purchase the Premises on the same terms and conditions as provided herein for the exercise of its option to purchase, except that the purchase price shall be the price paid in a conveyance that would have complied with the provisions of this Covenant;
- f) exercise of statutory power of sale pursuant to the mortgage recorded herewith; and

- g) any contract for sale or any sale or other transfer or conveyance of the Premises in violation of the provisions of this Covenant in the absence of a certificate from the Authority approving such sale, transfer or conveyance as provided in Paragraph 5, to the maximum extent permitted by law shall be voidable by the Authority by suit in equity to enforce such agreements, covenants and restrictions.

If any action is brought to enforce this Covenant, the prevailing party shall be entitled to actual attorneys fees and other costs of bringing the action, in addition to any other relief or remedy to which such party may be entitled.

The Developer and the Owner hereby grant to the Authority the right to enter upon the Premises for the purpose of enforcing the restrictions herein contained, or of taking all actions with respect to the Premises which the Authority may determine to be necessary or appropriate, with or without court order, to prevent, remedy or abate any violation of the agreements, covenants and restrictions.

19. Third Party Beneficiaries. The Covenant as to Maximum Resale Price may be enforced by any Owner and/or prospective purchaser of the Premises.

20. Waiver. Nothing contained herein shall limit the rights of the Authority to release or waive, from time to time, in whole or in part, any of the restrictions contained herein with respect to the Premises; no waiver or release shall be effective unless it is in writing and executed by the Authority.

21. Captions Not Binding. Captions for sections have been inserted for convenient reference and are not to be construed to limit or modify the provisions of this Covenant.

22. Severability. If any provision of this Covenant or the application thereof to any person or circumstance is held to be invalid or unenforceable by any decision of any court of competent jurisdiction in an action in which the Authority is a party, such decision shall not impair or otherwise affect any

other provision of this Covenant, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable.

23. Assignment. The Authority retains the right to assign its interest in this Covenant to the City of Boston.

WITNESS our hands and seals this ____ day of _____, 198__.

DEVELOPER:

BY:

Its

OWNER:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk ss.

, 1988.

Then personally appeared before me the above-named _____ and
acknowledged the foregoing to be his/her free act and deed before me.

Notary Public

My Commission Expires:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk ss.

, 1988.

Then personally appeared before me the above-named _____ and
acknowledged the foregoing to be his/her free act and deed before me.

Notary Public

My Commission Expires:

MEMORANDUM

FEBRUARY 16, 1989

TO : BOSTON REDEVELOPMENT AUTHORITY AND
STEPHEN COYLE, DIRECTOR

FROM: ANTHONY WILLIAMS, ASSISTANT DIRECTOR FOR NEIGHBORHOOD
HOUSING AND DEVELOPMENT
ANTONIO TORRES, SENIOR PLANNER
BRIAN BYRNES, SENIOR PLANNER

SUBJECT: REQUEST AUTHORIZATION TO EXECUTE AFFORDABLE
HOUSING AGREEMENT FOR 540 EAST BROADWAY,
SOUTH BOSTON, Z#-11127

SUMMARY: In April 7, 1988 the Authority voted to approve the variances for this 24 unit multifamily housing development and 24 parking spaces subject to developer resubmitting the design for BRA approval. Afterwards, the Board of Appeal granted the six zoning variances for this project. The developer wishes to provide homeownership opportunities for two moderate income families at this development and enter into a voluntary affordable housing agreement with the BRA.

Court House Realty Trust (William Kiley, trustee) proposes to build 24 units in a six story building in an H-1-50 (apartment) zoning district.

The property is located on 12,000 square feet of land at 540 East Broadway Street in South Boston. The average unit size is 875 square feet. All units have two bedrooms and two baths. On site parking will be provided for 24 cars (13 in the basement garage and 11 on the surface). The projected sales prices is \$170,000 per unit including one parking space. Access to the parking will be from the rear, East Third Street, so it will not adversely impact the well travelled East Broadway Street.

BRA staff is evaluating the revised schematic design for this project. The BRA at its meeting of April 7, 1988 requested that the plans be resubmitted for BRA approval. The revised design will be presented to the BRA Board.

The developer proposes to sell two 2 bedroom units for \$85,000 each. The units would be offered to eligible households under the Massachusetts Housing Finance Agency (MHFA) program for first time homebuyers. Households whose yearly income is between \$37,000 to \$43,000 should be able to qualify with a 5% downpayment. The units would also have a deed restriction to limit its appreciation through time and at time of resale to

offer an opportunity to another moderate income family.

The developer is also interested to apply for a construction loan through the Boston Industrial Development Finance Authority (BIDFA). The developer's voluntary affordable housing contribution for moderate income families should meet BIDFA's criteria for a City sponsored project. If the project financing is approved by BIDFA, the developer would be able to obtain a lower interest rate, approximately 9.75%, than through conventional mortgage lenders.

An appropriate vote follows:

VOTED: That the Authority hereby authorizes the Director to enter into an Affordable Housing Agreement with the Court House Realty Trust and William Kiley, Trustee. This Agreement shall be substantially in the form attached.

USE	MAX. F.A.R.	RESIDENCE DISTRICTS	BUSINESS DISTRICTS	LOCAL RETAIL & SERVICE STORES
S-3	0.5	SINGLE FAMILY		
R-5	0.8	TWO FAMILY		
R-8	1.0	3 FAMILY, APTS		
			L-1	
			L-5	
				R-4

USE	MAX. F.A.R.	RESIDENCE DISTRICTS	BUSINESS DISTRICTS	LOCAL RETAIL & SERVICE STORES
S-3	0.5	SINGLE FAMILY		
R-5	0.8	TWO FAMILY		
R-8	1.0	3 FAMILY, APTS		
			L-1	
			L-5	
				R-4

PRO FORMA
SUBMITTED TO
BOSTON REDEVELOPMENT AUTHORITY

PROJECT
Proposed Apartments

Location
540 East Broadway
South Boston, MA 02127

Developer
Court House Realty Trust
William Kiley, Trustee
711 East Broadway
South Boston, MA 02127
Tel. No: 268-1566

Architect
PDE Associates, Inc.
Richard Cecconi
76 Canal Street
Boston, MA 02114
Tel. No: 367-4777

Attorneys
Rull & McKenney
583 East Broadway
South Boston, MA 02127
Tel. No: 268-1860

Unit Mix

24 - 2 Br. Units	875 net Sq. Ft.
Living/Dining Area	257 Sq. Ft.
Kitchen	90 Sq. Ft.
Bathroom	35 Sq. Ft.
Bedroom #1	144 Sq. Ft.
Bedroom #2	120 Sq. Ft.

Parking
24 Parking Spaces (2 Handicapped)

Gross Sq. Footage
23,678 Sq. Ft.

Land Area
12,000 Sq. Ft.

Dated: March 16, 1988

A.	<u>LAND ACQUISITION</u>	\$ 250,000.00
B.	<u>PRE CONSTRUCTION</u> <u>LEGAL FEES</u>	
1.	Matters relating to Clearing Title	10,000.00
2.	Matters relating to Obtaining Variance from Zoning Board of Appeal	48,000.00
C.	<u>CONSTRUCTION FINANCING</u>	2,500,000.00
D.	<u>CLOSING COSTS:</u> <u>CONSTRUCTION FINANCING</u>	
1.	Application Fee	1,000.00
2.	Points	50,000.00
3.	Legal Fee	25,000.00
4.	Title Insurance	4,000.00
5.	Recording Fees	100.00
6.	Lien Certificate	10.00
7.	Plot Plan	250.00
E.	<u>ARCHITECTS FEES; ENGINEERING</u> <u>FEES AND OTHER CONSULTANTS</u>	250,000.00
F.	<u>CONSTRUCTION LOAN CARRYING COSTS</u> (11%; 2 Years)	550,000.00
G.	<u>LEGAL FEES</u>	
1.	Condominium conversion	48,000.00
2.	Closing Representations	21,600.00
H.	<u>BROKERS COMMISSIONS</u>	259,200.00
I.	<u>ADVERTISING EXPENSES</u>	50,000.00
TOTAL	.	\$ 4,067,160.00
PER UNIT		169,465.00